

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS-----X
MATTHEW DULANY,

Plaintiff,

-against-

POLY PREP COUNTRY DAY SCHOOL, JOHN AND JANE
DOE 1-30, MEMBERS OF THE BOARD OF TRUSTEES OF
POLY PREP COUNTRY DAY SCHOOL, in their official and
individual capacities, whose identities are presently unknown to
Plaintiff,Defendants.
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Index No.

Date Purchased:

Plaintiff designates

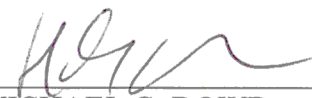
KINGS

County as the place of trial.

The basis of the venue is
Defendants' place of
business.**SUMMONS**

To the above-named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in this complaint.

Dated: New York, New York
October 24, 2019

MICHAEL G. DOWD
600 Third Avenue, 15th Floor
New York, NY 10016
(212) 751-1640

SWEENEY, REICH & BOLZ, LLP
By: Gerard J. Sweeney, Esq.
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Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
MATTHEW DULANY,

Index No.
Date Filed:

Plaintiff,

-against-

VERIFIED COMPLAINT

POLY PREP COUNTRY DAY SCHOOL, JOHN AND JANE
DOE 1-30, MEMBERS OF THE BOARD OF TRUSTEES OF
POLY PREP COUNTRY DAY SCHOOL, in their official and
individual capacities, whose identities are presently unknown to
Plaintiff,

Defendants.

-----X

Plaintiff, MATTHEW DULANY, by his attorney, MICHAEL G. DOWD, complaining
of Defendants, hereby alleges the following:

JURISDICTION AND VENUE

1. This action is timely commenced pursuant to the New York State Child Victims Act, dated February 14, 2019, and CPLR § 214-g.
2. The Court has jurisdiction pursuant to CPLR § 301 as Defendants' principal place of business is in New York and because much of the unlawful conduct complained of herein occurred in New York.
3. Venue is proper pursuant to CPLR § 503 because Kings County is the principal place of business of Defendants. In addition, many of the events giving rise to this action occurred in Kings County.

AS AND FOR A FIRST CAUSE OF ACTION:**NEGLIGENT SUPERVISION**

4. The Plaintiff, MATTHEW DULANY, (hereinafter "PLAINTIFF") was born on October 18, 1974. He is a resident of Maryland.
5. At all material times, Plaintiff attended POLY PREP COUNTRY DAY SCHOOL from in or around 1986 through in or around 1988.
6. Defendant, POLY PREP COUNTRY DAY SCHOOL, was at all material times a private school doing business in Kings County, New York.
7. Defendants, JOHN AND JANE DOE 1-30, whose names are presently unknown, were members of the POLY PREP COUNTRY DAY SCHOOL BOARD OF TRUSTEES (hereinafter "BOARD OF TRUSTEES") during all material times herein. Upon information and belief, the BOARD OF TRUSTEES was responsible for the operation of POLY PREP COUNTRY DAY SCHOOL, including fundraising and hiring administrators.
8. Upon information and belief, PHILIP FOGLIETTA (hereinafter "FOGLIETTA") was hired by POLY PREP COUNTRY DAY SCHOOL to coach football in or around 1966. Upon information and belief, FOGLIETTA remained an employee at POLY PREP COUNTRY DAY SCHOOL through at least 1991.
9. Upon information and belief, when FOGLIETTA met PLAINTIFF in or around 1986, he was an employee and agent of POLY PREP COUNTRY DAY SCHOOL acting within the course and scope of his authority as a POLY PREP COUNTRY DAY SCHOOL employee.

10. Sometime after PLAINTIFF met FOGLIETTA in or around 1986, FOGLIETTA began a pattern of grooming PLAINTIFF for the purpose of sexually abusing him. The grooming included but was not limited to FOGLIETTA tasking PLAINTIFF to be the equipment manager for the football team. FOGLIETTA would give PLAINTIFF general errands to do that made PLAINTIFF feel needed and supported. FOGLIETTA and PLAINTIFF would spend their downtime on POLYPREP'S property in FOGLIETTA'S office. FOGLIETTA would also give gifts to PLAINTIFF.
11. FOGLIETTA continued acting as an employee and agent of POLY PREP COUNTRY DAY SCHOOL through the entire period when FOGLIETTA sexually abused PLAINTIFF.
12. FOGLIETTA'S abuse of PLAINTIFF occurred on approximately 30 separate occasions between approximately 1986 and 1988. The abuse included but was not limited to FOGLIETTA pushing and rubbing his genital area and erect penis against PLAINTIFF's body, sometimes while clothed and other times with FOGLIETTA'S erect penis exposed. The abuse also included but was not limited to FOGLIETTA grabbing PLAINTIFF'S genitals both over his clothes and under his clothes.
13. FOGLIETTA would sexually abuse PLAINTIFF in FOGLIETTA'S office, in the room where the uniforms were kept, and the visiting team locker room.
14. All of these locations where the abuse occurred were located on the property of POLY PREP COUNTRY DAY SCHOOL.
15. All of the sexual abuse described herein occurred when other POLY PREP teachers, administrators and employees were on the property of said school.

16. Upon information and belief, prior to the sexual abuse alleged herein, POLY PREP COUNTRY DAY SCHOOL had ample notice of FOGLIETTEA'S sexually abusive behavior. For example in or around 1966, FOGLIETTA grabbed the crotch of WJ, a student at POLY PREP COUNTRY DAY SCHOOL.
17. Upon information and belief, WJ reported the incident to his parents, who then reported the incident to J. FOLWELL SCULL (hereinafter "SCULL"), the headmaster of POLY PREP COUNTRY DAY SCHOOL at the time, and HARLOW PARKER (hereinafter "PARKER"), POLY PREP COUNTRY DAY SCHOOL'S then Athletic Director.
18. Upon information and belief, SCULL and PARKER told parents of POLY PREP COUNTRY DAY SCHOOL student, WJ, that if he persisted in making complaints about FOGLIETTA punitive action would be taken against WJ.
19. Upon information and belief, in the early 1970s, WILLIAM WILLIAMS (hereinafter "WILLIAMS"), the headmaster of POLY PREP COUNTRY DAY SCHOOL from 1970 through 2000 received a letter from a parent or other adult that claimed that FOGLIETTA was "molesting" students at POLY PREP COUNTRY DAY SCHOOL. WILLIAMS, however, took no actions against FOGLIETTA in response to this letter because its author did not identify himself or herself.
20. Upon information and belief despite these above-mentioned complaints, FOGLIETTA had no restrictions placed upon him. In fact, some time in the 1970s, administrators at POLY PREP COUNTRY DAY SCHOOL permitted FOGLIETTA to move his office into the boys' locker room, where he was free of any

administrative supervision and free to continue to engage in his perverted pursuit of POLY PREP COUNTRY DAY SCHOOL boys.

21. Upon information and belief, in or around 1974, FOGLIETTA attempted to sexually abuse JM, a student at POLY PREP COUNTRY DAY SCHOOL.
22. Upon information and belief, shortly thereafter, his parents met with WILLIAMS and HARLOW PARKER (hereinafter "PARKER"), the Dean of Students and Director of Athletics at POLY PREP COUNTRY DAY SCHOOL at the time.
23. Upon information and belief, JM told WILLIAMS and PARKER that FOGLIETTA had "tried to jack him off".
24. Upon information and belief, WILLIAMS and PARKER called JM a liar in front of his parents.
25. Upon information and belief, about a year later, JM and his parents met with WILLIAMS and PARKER a second time.
26. Upon information and belief, JM told WILLIAMS and PARKER that he had seen several boys masturbating and fellating FOGLIETTA in his car.
27. Upon information and belief, WILLIAMS and PARKER told JM's parents that JM was on "thin ice" and threatened disciplinary action against him if he persisted on making complaints against FOGLIETTA.
28. Upon information and belief, after hearing JM's accusations, WILLIAMS talked to a few teachers at the school, but did not conduct an investigation nor did he report these allegations to law enforcement or other lawful civil authorities.
29. Upon information and belief, at all material times, WILLIAMS had seen boys in FOGLIETTA'S car.

30. Upon information and belief, in the early 1970's PARKER opened the shower-room door while FOGLIETTA was sexually abusing a student of POLY PREP COUNTRY DAY SCHOOL. PARKER quickly shut the door.
31. Upon information and belief, in or around 1991, WILLIAMS decided not to renew FOGLIETTA'S contract after receiving, *inter alia*, an anonymous call and a letter from a former student accusing FOGLIETTA of sexual abuse.
32. Upon information and belief, despite these above-described incidents, FOGLIETTA was allowed to continue to work and coach at POLY PREP up and through the period in which he sexually abused PLAINTIFF.
33. At all material times, PLAINTIFF was aware of no POLY PREP COUNTRY DAY SCHOOL rules or regulations or policies concerning or addressing sexual abuse, sexual harassment, and sexual misconduct of POLY PREP COUNTRY DAY SCHOOL students, such as PLAINTIFF, by teachers and/or employees such as FOGLIETTA.
34. During all material times, PLAINTIFF received no training or information in any form, including but not limited to, classroom instruction or oral presentation, through video or written document on how to deal with sexual misconduct, sexual abuse, sexual boundary violations or sexually harassing behavior by POLY PREP COUNTRY DAY SCHOOL teachers and/or employees on students like himself.
35. Upon information and belief, during all times herein, when PLAINTIFF was enrolled in school and communicated and otherwise interacted with FOGLIETTA, PLAINTIFF was entrusted by his parents to the care of DEFENDANTS and during such periods, DEFENDANTS were acting in the capacity of *in loco parentis* because

DEFENDANTS assumed custody and control over him as a minor child and as a student at the school.

36. Upon information and belief, FOGLIETTA used his position of trust and authority vested in him by DEFENDANTS for the purpose of sexually abusing PLAINTIFF.
37. Upon information and belief, at all material times, DEFENDANTS had a duty to exercise the same degree of care and supervision over the students, including PLAINTIFF, under their control as a reasonably prudent parent would have exercised under the same circumstances. This means that DEFENDANTS assumed a duty of care to protect the safety and welfare of PLAINTIFF and students at POLY PREP COUNTRY DAY SCHOOL. At all material times, DEFENDANTS owed a duty to PLAINTIFF to provide a safe and nurturing educational environment, where he would be protected from administrators and staff like FOGLIETTA who were under the employment and control of DEFENDANTS.
38. Upon information and belief, during FOGLIETTA'S employment by DEFENDANTS and while PLAINTIFF was a student in POLY PREP COUNTRY DAY SCHOOL'S care, DEFENDANTS failed to exercise the degree of care that a reasonable prudent parent would have exercised under similar circumstances.
39. At all material times, DEFENDANTS owed a special duty to PLAINTIFF that required DEFENDANTS to take reasonable steps to anticipate such behavior from its employees, like FOGLIETTA, which threatened the safety of students including PLAINTIFF.
40. At all material times, DEFENDANTS had a duty to properly supervise FOGLIETTA as their employee because of their duty to take care of PLAINTIFF.

41. At all material times, PLAINTIFF reposed his trust and confidence as a student and minor individual in FOGLIETTA and DEFENDANTS, who occupied a superior position of influence and authority over PLAINTIFF, to provide PLAINTIFF with a safe and secure educational environment.
42. Upon information and belief, at all material times, DEFENDANTS knew or should have known of FOGLIETTA'S propensity to sexually abuse minor students.
43. Upon information and belief, DEFENDANTS negligently failed to adequately implement a reasonable or effective supervisory system, plan, or protocol or procedure for supervising personnel so as to prevent inappropriate, offensive, sexual and/or abuse or contact of students by POLY PREP COUNTRY DAY SCHOOL employees.
44. Upon information and belief, the injuries to PLAINTIFF resulted from DEFENDANTS' failure to provide PLAINTIFF with supervision of a parent of ordinary prudence under the same circumstances.
45. Upon information and belief, the injuries to PLAINTIFF were foreseeable consequences of DEFENDANTS' negligent failure to supervise FOGLIETTA and PLAINTIFF. Said injuries were caused by or contributed to by the carelessness, recklessness and the grossly negligent conduct of DEFENDANTS, their agents, servants and/or employees, in failing to properly and adequately supervise the conduct of FOGLIETTA as it related to PLAINTIFF.
46. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to low self-esteem, depression, fear, insecurity, alcohol dependency, loss of enjoyment with family, loss of educational opportunity,

suicidal thoughts, and anxiety, and upon information and belief, some or all of these injuries are of a permanent and lasting nature.

47. That by reason of the foregoing, DEFENDANTS are liable to PLAINTIFF for punitive and exemplary damages.

48. It is hereby alleged pursuant to CPLR § 1603 that the foregoing cause of action is exempt from the operation of CPLR § 1601 by reason of one or more of the exemptions provided in CPLR § 1602, including but not limited to CPLR § 1602(7).

49. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION:

NEGLIGENT RETENTION

50. PLAINTIFF repeats and realleges the above paragraphs of this Complaint as if fully set forth herein.

51. Upon information and belief, as more fully alleged above, DEFENDANTS' duty of care to PLAINTIFF included a duty not to retain an employee such as FOGLIETTA who would use his position and authority and influence to harm minor students such as PLAINTIFF.

52. Upon information and belief, DEFENDANTS knew or should have known that FOGLIETTA sexually abused PLAINTIFF and/or should have known, prior to the abuse of PLAINTIFF of FOGLIETTA'S propensity to abuse minor students with whom he came in contact with.

53. Upon information and belief, prior to the abuse of PLAINTIFF by FOGLIETTA, DEFENDANTS had actual notice of FOGLIETTA'S propensity to sexually abuse students and otherwise that he was a child molester.
54. When PLAINTIFF was in their care, said DEFENDANTS failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.
55. DEFENDANTS were wanton, reckless, officially tolerant and deliberately indifferent to abuse of PLAINTIFF by FOGLIETTA.
56. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to low self-esteem, depression, fear, insecurity, alcohol dependency, loss of enjoyment with family, loss of educational opportunity, suicidal thoughts, and anxiety, and upon information and belief, some or all of these injuries are of a permanent and lasting nature.
57. That by reason of the foregoing, DEFENDANTS are liable to PLAINTIFF for punitive and exemplary damages.
58. It is hereby alleged pursuant to CPLR § 1603 that the foregoing cause of action is exempt from the operation of CPLR § 1601 by reason of one or more of the exemptions provided in CPLR § 1602, including but not limited to CPLR § 1602(7).
59. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION:

NEGLIGENT FAILURE TO PROVIDE A SAFE AND SECURE ENVIRONMENT

60. PLAINTIFF repeats and realleges the above paragraphs of this Complaint as if fully set forth herein.

61. During all material times, DEFENDANTS owed a special duty to PLAINTIFF as a student. This special duty required DEFENDANTS to take reasonable steps to anticipate such threats from its employees like FOGLIETTA which threatened the safety of PLAINTIFF.

62. Upon information and belief, DEFENDANTS failed to provide a reasonably safe environment to PLAINTIFF by failing to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

63. As a result, DEFENDANTS are liable to PLAINTIFF for their negligent failure to provide a reasonably safe and secure environment.

64. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to low self-esteem, depression, fear, insecurity, alcohol dependency, loss of enjoyment with family, loss of educational opportunity, suicidal thoughts, and anxiety, and upon information and belief, some or all of these injuries are of a permanent and lasting nature.

65. That by reason of the foregoing, DEFENDANTS are liable to PLAINTIFF for punitive and exemplary damages.

66. It is hereby alleged pursuant to CPLR § 1603 that the foregoing cause of action is exempt from the operation of CPLR § 1601 by reason of one or more of the exemptions provided in CPLR § 1602, including but not limited to CPLR § 1602(7).

67. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION:

NEGLIGENT FAILURE TO TRAIN TEACHERS AND ADMINISTRATORS RELATED TO SEXUAL ABUSE AND TRAIN STUDENTS RELATED TO SEXUAL ABUSE

68. PLAINTIFF repeats and realleges the above paragraphs of this Complaint as if fully set forth herein.

69. DEFENDANTS, their agents, servants and employees owed a duty of care to PLAINTIFF as more fully alleged above. That duty included the duty to train and educate employees and administrators and establish adequate and effective policies and procedures calculated to detect, prevent and address inappropriate teacher/employee behavior and conduct including teacher/employee-student boundary violations, sexually inappropriate teacher/employee behavior and conduct and the sexual abuse of students by teachers/employees for the purpose of preventing the sexual abuse of students like PLAINTIFF.

70. Upon information and belief, DEFENDANTS did not establish effective training and education programs, policies and procedures for their administrators, teachers and employees calculated to detect, prevent and address the problem of the inappropriate teacher/employee behavior and conduct including teacher/employee-student boundary violations, sexually inappropriate teacher/employee behavior and conduct and the sexual abuse of students by employees.

71. Upon information and belief, in failing to establish such training and education programs, policies and procedures for employees and administrators, DEFENDANTS

failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.

72. Upon information and belief, DEFENDANTS had a duty to train and educate students including PLAINTIFF on inappropriate teacher/employee behavior and conduct including teacher/employee-student boundary violations, sexually inappropriate teacher/employee behavior and conduct and the sexual abuse of students by teacher/employee and to establish effective policies and procedures to address said problems.
73. Upon information and belief, DEFENDANTS did not train and educate PLAINTIFF on the problem of inappropriate teacher/employee behavior and conduct including teacher/employee-student boundary violations, sexually inappropriate teacher/employee behavior and conduct and the sexual abuse of students by teachers/employees and did not establish effective policies and procedures to address said problems.
74. Upon information and belief, in failing to establish such training and education programs, policies and procedures for students like PLAINTIFF, DEFENDANTS failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.
75. Upon information and belief, DEFENDANTS are liable to the PLAINTIFF, as the result of their negligent failure to establish effective training and education programs, policies and procedures for their administrators, teachers and employees calculated to detect and prevent inappropriate teacher/employee behavior and conduct and including teacher/employee-student boundary violations, sexually inappropriate

teacher/employee behavior and conduct and the sexual abuse of students by teachers/employees . DEFENDANTS are also liable to PLAINTIFF for their failure to train and educate PLAINTIFF as a student on the problem of inappropriate teacher/employee behavior and conduct including teacher/employee-student boundary violations, sexually inappropriate teacher/employee behavior and conduct and the sexual abuse of students by teachers/employees and to establish effective policies and procedures to address said problems.

76. DEFENDANTS were wanton, reckless, officially tolerant and deliberately indifferent by their failure to develop such effective training and education programs, policies and procedures for employees, administrators and students.

77. DEFENDANTS their agents, servants and employees were negligent, careless and reckless and acted willfully, wantonly and were grossly negligent in failing to establish adequate and effective professional training and education programs and procedures for their employees calculated to prevent abuse of youth.

78. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to low self-esteem, depression, fear, insecurity, alcohol dependency, loss of enjoyment with family, loss of educational opportunity, suicidal thoughts, and anxiety, and upon information and belief, some or all of these injuries are of a permanent and lasting nature.


79. That by reason of the foregoing, Defendants are liable to PLAINTIFF for punitive and exemplary damages.

80. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7) and 1602(11).

81. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiff demands judgment against the Defendants, together with compensatory and punitive damages, and the interests, costs and disbursements pursuant to the causes of action herein.

Dated: New York, New York
October 24, 2019



MICHAEL G. DOWD
600 Third Avenue, 15th Floor
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(212) 751-1640

SWEENEY, REICH & BOLZ, LLP
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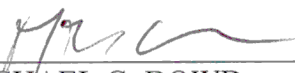
VERIFICATION BY ATTORNEY

MICHAEL G. DOWD, an attorney being duly admitted before the courts of the State of New York, hereby affirms the following under penalties of perjury:

That he is the attorney for the Plaintiff in the above-entitled action with an office located at 600 Third Ave, New York, New York; that he has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; that the same is true to his knowledge, except as to the matters stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

That the reason why this verification is made by deponent instead of Plaintiff is because Plaintiff is not within the County of New York where deponent has his office. Deponent further says that the grounds of his belief as to all matters in the VERIFIED COMPLAINT not stated to be upon his knowledge are based upon conversations with the Plaintiff and other writings relevant to this action.

Dated: New York, New York
October 24, 2019



MICHAEL G. DOWD
Attorney for Plaintiff
600 Third Avenue, 15th Floor
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(212) 751-1640